

FILED
UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

12 DEC 13 AM 11:48

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UNITED STATES OF AMERICA,

Plaintiff,

vs.

**MICHAEL GARRET SCHAVIER,
JUAN RUBALCAVA,
MICHAEL FRYE,
SHANE SMOLIK,
CARLOS TERAN,
KYLE MENDENHALL, and
KRISTOPHER HOLLINGSHEAD,**

Defendants.

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)
) **CRIMINAL NO. 12- 3208 RB**
)
) **Count 1: 21 U.S.C. § 846: Conspiracy;**
)
) **Counts 2 to 14: 21 U.S.C. §§ 841(a)(1) and**
) **(b)(1)(C): Possession with Intent to Distribute**
) **Oxycodone and Adderall; 18 U.S.C. § 2: Aiding and**
) **Abetting.**
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INDICTMENT

The Grand Jury charges:

Count 1

Beginning on or about December 2011, and continuing to and including May 27, 2012, in Doña Ana County, and elsewhere, in the District of New Mexico, the defendants, **MICHAEL GARRET SCHAVIER, JUAN RUBALCAVA, MICHAEL FRYE, SHANE SMOLIK, CARLOS TERAN, KYLE MENDENHALL, and KRISTOPHER HOLLINGSHEAD,** unlawfully, knowingly, and intentionally did combine, conspire, confederate, and agree with each other and with other persons whose names are known and unknown to the Grand Jury to commit the following offenses against the United States, to wit: possession with intent to distribute a mixture and substance containing a detectable amount of Oxycodone and Adderall, Schedule II controlled substances, contrary to 21 U.S.C. §§ 841(a)(1) and (b)(1)(C).

Overt Acts

In furtherance of the conspiracy, and to accomplish the objectives of the conspiracy, the following acts, among others, were committed:

Overt Act One

On or about December 9, 2011, Michael Frye obtained 360 tablets of Oxycodone (30 mg) at the Walgreens Pharmacy located on E. Lohman Avenue in Las Cruces, New Mexico, by presenting a fraudulent prescription that purported to be in his name, and he picked up the prescription in his name.

Overt Act Two

On or about February 2, 2012, Michael Frye obtained 180 tablets of Oxycodone (30 mg) at the Walgreens Pharmacy located on El Paseo Road in Las Cruces, New Mexico, by presenting a fraudulent prescription that purported to be in his name, and he picked up the prescription in his name.

Overt Act Three

On or about March 7, 2012, Michael Frye obtained 120 tablets of Oxycodone (15 mg) at the Walmart Pharmacy located on Walton Boulevard in Las Cruces, New Mexico, by presenting a fraudulent prescription that purported to be in his name, and he picked up the prescription in his name.

Overt Act Four

On or about March 8, 2012, Michael Frye attempted to obtain 180 tablets of Oxycodone (30 mg) at the Walmart Pharmacy located on S. Valley Drive in Las Cruces, New Mexico, by presenting a fraudulent prescription that purported to be in his name.

Overt Act Five

On or about April 22, 2012, Carlos Teran obtained 240 tablets of Oxycodone (30 mg) at the Walgreens Pharmacy located on El Paseo Road in Las Cruces, New Mexico, by presenting a fraudulent prescription that purported to be for a person named "W.V.," while at the time falsely representing himself to be a person named "J.S."

Overt Act Six

On or about April 22, 2012, Juan Rubalcava and Michael Garret Schavier drove to the Walgreens Pharmacy located on El Paseo Road in Las Cruces, New Mexico, in a blue Lexus belonging to Juan Rubalcava, and met Carlos Teran in the parking lot to pick up the prescription Carlos Teran filled for "W.V."

Overt Act Seven

On or about April 22, 2012, Carlos Teran obtained 90 tablets of Adderall (30 mg) at the Walgreens Pharmacy located on N. Main Street in Las Cruces, New Mexico, that purported to be for a person named "W.V.," while at the time falsely representing himself to be a person named "J.S."

Overt Act Eight

On or about April 25, 2012, Carlos Teran obtained 180 tablets of Oxycodone (30 mg) at the Walgreens Pharmacy located on El Paseo Road in Las Cruces, New Mexico, that purported to be for a person named "G.N.," while at the time falsely representing himself to be a person named "J.S."

Overt Act Nine

On or about April 25, 2012, Michael Garret Schavier drove Carlos Teran to the Walgreens Pharmacy located on El Paseo Road in Las Cruces, New Mexico, in a Chevy Tahoe to fill the fraudulent prescription for "G.N."

Overt Act Ten

On or about May 3, 2012, Kyle Mendenhall obtained 240 tablets of Oxycodone (30 mg) at the Albertson's Pharmacy located on E. Lohman Avenue in Las Cruces, New Mexico, by presenting a fraudulent prescription that purported to be for a person named "M.S.," while at the time falsely representing himself to be a person named "M.S."

Overt Act Eleven

On or about May 4, 2012, Kyle Mendenhall obtained 171 tablets of Oxycodone (30 mg) and 60 tablets of Adderall (30 mg) at the Albertson's Pharmacy located on E. Lohman Avenue in Las Cruces, New Mexico, by presenting a fraudulent prescription that purported to be for a person named "K.K.," while at the time falsely representing himself to be a person named "M.S."

Overt Act Twelve

On or about May 8, 2012, Conner Ian Smith obtained 240 tablets of Oxycodone (30 mg) at the Walgreens Pharmacy located on N. White Sands Boulevard in Alamogordo, New Mexico, by presenting a fraudulent prescription that purported to be for a person named "B.S.," while at the time falsely representing himself to be a person named "T.B."

Overt Act Thirteen

On or about May 8, 2012, Juan Rubalcava and Michael Garret Schavier drove Conner Ian Smith to the Walgreens Pharmacy located on N. White Sands Boulevard in Alamogordo, New Mexico, in a blue Lexus belonging to Juan Rubalcava, to fill the fraudulent prescription for "B.S."

Overt Act Fourteen

On or about May 13, 2012, Kyle Mendenhall and Juan Rubalcava obtained 360 tablets of Oxycodone (30 mg) and 90 tablets of Adderall (30 mg) at the Walgreens Pharmacy located on N. White Sands Boulevard in Alamogordo, New Mexico, by presenting two fraudulent prescriptions

that purported to be for a person named "R.B." At the time, Kyle Mendenhall falsely represented himself to a person named "M.S." and Juan Rubalcava picked up the prescriptions in his name.

Overt Act Fifteen

On or about May 17, 2012, Kyle Mendenhall obtained 360 tablets of Oxycodone (30 mg) and 60 tablets of Adderall (30 mg) at the Sam's Club Pharmacy located on N. Telshor Boulevard in Las Cruces, New Mexico, by presenting two fraudulent prescriptions that purported to be for a person named "F.H.," while falsely representing himself to be a person named "T.B."

Overt Act Sixteen

On or about May 17, 2012, Michael Garret Schavier drove Kyle Mendenhall to the Sam's Club Pharmacy located on N. Telshor Boulevard in Las Cruces, New Mexico, in a Hyundai Santa Fe, to fill the fraudulent prescriptions for "F.H."

Overt Act Seventeen

On or about May 19, 2012, Conner Ian Smith obtained 240 tablets of Oxycodone (30 mg) and 90 tablets of Adderall (30 mg) at the Walgreens Pharmacy located on N. White Sands Boulevard in Alamogordo, New Mexico, by presenting a fraudulent prescription that purported to be for a person named "M.B.," while at the time falsely representing himself to be a person named "T.B."

Overt Act Eighteen

On or about May 19, 2012, Juan Rubalcava, Michael Garret Schavier, and Conner Ian Smith drove to the Outback Steakhouse located on N. Telshor Boulevard in Las Cruces, New Mexico, and met with Kristopher Hollingshead who gave Michael Garret Schavier money to purchase the prescriptions for "M.B." in Alamogordo, New Mexico, in exchange for receiving a portion of the pills fraudulently obtained.

Overt Act Nineteen

On or about May 19, 2012, Conner Ian Smith attempted to obtain 240 tablets of Oxycodone (30 mg) and 90 tablets of Adderall at the Walmart Pharmacy located on S. New York Avenue in Alamogordo, New Mexico, by presenting a fraudulent prescription that purported to be for a person named "S.D."

Overt Act Twenty

On or about May 19, 2012, Juan Rubalcava and Michael Garret Schavier drove Conner Ian Smith to the Walgreens Pharmacy located on North White Sands Boulevard and the Walmart Pharmacy located on S. New York Avenue in Alamogordo, New Mexico, in a blue Lexus belonging to Juan Rubalcava, to fill the fraudulent prescriptions for "M.B." and "S.D."

Overt Act Twenty-One

On or about May 19, 2012, Juan Rubalcava and Michael Garret Schavier gave Conner Ian Smith the prescriptions to fill for "M.B." and "S.D.," the money to purchase the prescriptions, and the fraudulent identification card of "T.B."

Overt Act Twenty-Two

On or about May 27, 2012, Shane Smolik obtained 120 tablets of Oxycodone (30 mg) at the Walgreens Pharmacy on Sudderth Drive in Ruidoso, New Mexico, by presenting a fraudulent prescription that purported to be for a person named "M.L.," and he picked up the prescription in his name.

In violation of 21 U.S.C. § 846.

Count 2

On or about December 9, 2011, in Dona Ana County, in the District of New Mexico, the defendant, **MICHAEL FRYE**, unlawfully, knowingly and intentionally possessed with intent to

distribute a mixture and substance containing a detectable amount of Oxycodone, a Schedule II controlled substance.

In violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(C), and 18 U.S.C. § 2.

Count 3

On or about February 2, 2012, in Doña Ana County, in the District of New Mexico, the defendant, **MICHAEL FRYE**, unlawfully, knowingly and intentionally possessed with intent to distribute a mixture and substance containing a detectable amount of Oxycodone, a Schedule II controlled substance.

In violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(C), and 18 U.S.C. § 2.

Count 4

On or about March 7, 2012, in Doña Ana County, in the District of New Mexico, the defendant, **MICHAEL FRYE**, unlawfully, knowingly and intentionally possessed with intent to distribute a mixture and substance containing a detectable amount of Oxycodone, a Schedule II controlled substance.

In violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(C), and 18 U.S.C. § 2.

Count 5

On or about April 22, 2012, in Doña Ana County, in the District of New Mexico, the defendants, **CARLOSTERAN, MICHAEL GARRET SCHAVIER, and JUAN RUBALCAVA**, unlawfully, knowingly and intentionally possessed with intent to distribute a mixture and substance containing a detectable amount of Oxycodone, a Schedule II controlled substance.

In violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(C), and 18 U.S.C. § 2.

Count 6

On or about April 22, 2012, in Doña Ana County, in the District of New Mexico, the defendant, **CARLOS TERAN**, unlawfully, knowingly and intentionally possessed with intent to distribute a mixture and substance containing a detectable amount of Adderall, a Schedule II controlled substance.

In violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(C), and 18 U.S.C. § 2.

Count 7

On or about April 25, 2012, in Doña Ana County, in the District of New Mexico, the defendants, **CARLOS TERAN and MICHAEL GARRET SCHAVIER**, unlawfully, knowingly and intentionally possessed with intent to distribute a mixture and substance containing a detectable amount of Oxycodone, a Schedule II controlled substance.

In violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(C), and 18 U.S.C. § 2.

Count 8

On or about May 3, 2012, in Doña Ana County, in the District of New Mexico, the defendant, **KYLE MENDENHALL**, unlawfully, knowingly and intentionally possessed with intent to distribute a mixture and substance containing a detectable amount of Oxycodone, a Schedule II controlled substance.

In violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(C), and 18 U.S.C. § 2.

Count 9

On or about May 4, 2012, in Doña Ana County, in the District of New Mexico, the defendant, **KYLE MENDENHALL**, unlawfully, knowingly and intentionally possessed with intent to distribute a mixture and substance containing a detectable amount of Oxycodone and a mixture and substance containing a detectable amount of Adderall, Schedule II controlled substances.

In violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(C), and 18 U.S.C. § 2.

Count 10

On or about May 8, 2012, in Otero County, in the District of New Mexico, the defendants, **MICHAEL GARRET SCHAVIER**, and **JUAN RUBALCAVA**, unlawfully, knowingly and intentionally possessed with intent to distribute a mixture and substance containing a detectable amount of Oxycodone, a Schedule II controlled substance.

In violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(C), and 18 U.S.C. § 2.

Count 11

On or about May 13, 2012, in Otero County, in the District of New Mexico, the defendants, **KYLE MENDENHALL** and **JUAN RUBALCAVA**, unlawfully, knowingly and intentionally possessed with intent to distribute a mixture and substance containing a detectable amount of Oxycodone and a mixture and substance containing a detectable amount of Adderall, Schedule II controlled substances.

In violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(C), and 18 U.S.C. § 2.

Count 12

On or about May 17, 2012, in Doña Ana County, in the District of New Mexico, the defendants, **KYLE MENDENHALL** and **MICHAEL GARRET SCHAVIER**, unlawfully, knowingly and intentionally possessed with intent to distribute a mixture and substance containing a detectable amount of Oxycodone and a mixture and substance containing a detectable amount of Adderall, Schedule II controlled substances.

In violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(C), and 18 U.S.C. § 2.

Count 13

On or about May 19, 2012, in Otero County, in the District of New Mexico, the defendants, **MICHAEL GARRET SCHAVIER, and JUAN RUBALCAVA**, unlawfully, knowingly and intentionally possessed with intent to distribute a mixture and substance containing a detectable amount of Oxycodone and a mixture and substance containing a detectable amount of Adderall, Schedule II controlled substances.

In violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(C), and 18 U.S.C. § 2.

Count 14

On or about May 27, 2012, in Lincoln County, in the District of New Mexico, the defendant, **SHANE SMOLIK**, unlawfully, knowingly and intentionally possessed with intent to distribute a mixture and substance containing a detectable amount of Oxycodone, a Schedule II controlled substance.

In violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(C), and 18 U.S.C. § 2.

A TRUE BILL:

/s/
FOREPERSON OF THE GRAND JURY

Jason C. Smith
Assistant United States Attorney
RCW 12/11/12 2:42pm